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January 12, 2016

LETTER SENT BY E-MAIL ONLY

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Hon. David Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway
Suite 300, MS TB-06
Tacoma, WA 98402-4454

Re: Supreme Court No. 92672-7 - Personal Restraint Petition of John Richardson

Clerk and Counsel:

On December 9, 2015, the Petitioner's "PERSONAL RESTRAINT PETITION" was received. On January 12, 2016, the Petitioner's completed statement of finances form was received. By notation ruling I have authorized the filing of the petition without prepayment of the filing fee. The personal restraint petition has been assigned the above referenced Supreme Court cause number.

Pursuant to RAP 16.5, effective September 1, 2014, the personal restraint petition is transferred to Division II of the Court of Appeals. A copy of RAP 16.5 is enclosed for the Petitioner. A scanned copy of the personal restraint petition is enclosed for the Clerk of the Court of Appeals.

Sincerely,

Susan L. Carlson
Supreme Court Deputy Clerk

SLC:jd

Separate enclosures as stated

Supreme Court No. 926727
Pierce County Superior Court No. 08-1-01644-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint of

JOHN RICHARDSON,

Petitioner

PERSONAL RESTRAINT PETITION

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I. PROCEDURAL HISTORY & STATUS OF PETITIONER

In 2008, under cause number 08-1-01644-9, Mr. Richardson was charged with one count of murder in the first degree and one count of unlawful possession of a firearm. The court sentenced him to a lengthy prison sentence, one which Mr. Richardson is currently serving now in the custody of the Washington State Department of Corrections.

Mr. Richardson appealed his conviction, under Case No. 40249–1–II. On appeal, Mr. Richardson was represented by publically appointed appellate counsel who advanced only one argument on appeal. Counsel argued that the evidence was insufficient to prove that Mr. Richardson premeditated the murder (apparently conceding all elements of the lesser offense, intentional first degree murder).

In an unpublished opinion, the court summarily rejected the lone argument. The court found that the evidence was sufficient to prove premeditation.[1] Mr. Richardson's counsel filed a petition to review that decision on November 11, 2011, but that too was denied.

Mr. Richardson has filed one pro se PRP to attack the convictions in the case, Supreme Court No. 882568. He filed his motion for Discretionary Review on December 12, 2012. The State responded, filing

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[1] *State v. Richardson*, 162 Wn. App. 1022 at *3.

its answer on April 1, 2013. On July, 15, 2013, the court denied Mr. Richardson's PRP.

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The State charged John Richardson with first degree murder, while armed with a firearm, and second degree unlawful possession of a firearm.[2] A jury subsequently convicted Mr. Richardson of first degree murder. Several days later, the trial court also found Mr. Richardson guilty of second degree unlawful possession of a firearm. On appeal, Mr. Richardson argued there was insufficient evidence to support the jury's finding that he premeditated the murder. He did not attack the jury's finding that he killed the victim, nor did he attack any part of his conviction for unlawful possession of a firearm.

The Court of Appeals of Washington for Division Two affirmed.

B. THE EVIDENCE AT TRIAL

On March 27, 2008, Eric Nevils traveled with his friends, Ernesto Watson and Joey Torres, and $10,000 to South Tacoma to meet Albert Toomata, an anticipated drug supplier. Eric Nevils joined Toomata in his car, along with another passenger, Mr. Richardson. The three traveled to

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[2] The following facts have been taken from the court of appeals opinion denying Mr. Richardson's original direct appeal.

an apartment complex in South Tacoma. Mr. Richardson briefly left the vehicle at that location and then returned, informing his companions that they needed to go to Point Defiance.

Before leaving for Point Defiance, the three drove to the location where Nevils' two friends were waiting. Nevils handed them $6,000 claiming, "[i]f they are going to get me, they are not going to get me for everything." Nevils and Mr. Richardson then left Toomata, Watson, and Torres.

At around 8:30 PM that same day, residents of the North Park Drive area of Tacoma heard gunshots in two volleys. Several individuals either saw or heard a car leaving the area shortly thereafter. One man went outside to find Nevils groaning in a bushy area off the road. He and other neighbors called 911. However, by the time medics arrived, Nevils was dead. One neighbor later told police that the car he had seen was an older brown car with a white top.

Tacoma police dispatch announced the shooting and provided a description of the car. At the intersection of Sprague and South 19th Street in Tacoma, two officers observed a car matching the description and activated their lights. The officers pursued the vehicle at 70 miles per hour until it crashed into a dirt bank and the driver, Mr. Richardson, fled. The officers quickly apprehended Mr. Richardson. North Park Drive residents

identified the vehicle as the car leaving their neighborhood after the shots were heard.

After being arrested, officers acquired a series of alleged confessions from Mr. Richardson. First, during a post-arrest interview, Mr. Richardson stated that nothing had been planned, but his "homeboy" and Nevils had gotten into a fight. Second, a detective who happened to be standing outside the interview room heard Mr. Richardson allegedly break down crying, while alone in the interview room, exclaiming "I should have never shot. I should have never shot that gun."

Finally, the State obtained a series of incriminating statements from Larry Kleven, a convicted murderer who was serving a sentence of 416 months, regarding confessions that Mr. Richardson had allegedly made in jail. Those statements indicated that Mr. Richardson confessed to the following: (1) Having "two gun revolver" (sic); (2) intending to kill Nevils; (3) being a member of the "Wrecking Crew"; (4) knowing Nevils was going to be a witness against Nevils' uncle, another member of the Wrecking Crew; (5) being hired by Nevils' uncle to kill Nevils; and (6) killing Nevils with Jimmy Wamsley, the leader of the Wrecking Crew.

In addition to these confessions, the State produced a copy of a photograph from a cell phone found in Mr. Richardson's car showing him with two guns; the date and time stamp on the photo was March 27, 2008,

around 1:00 PM. A forensic scientist testified that two different guns had been used in Nevils' shooting.

III. GROUNDS FOR RELIEF

The evidence is insufficient under *Corpus Delicti*, to prove that Mr. Richardson committed Murder in the First Degree.

IV. ARGUMENT

A. THIS PRP IS NOT BARRED AS SUCCESSIVE

Under some circumstances, a petitioner may be barred from filing more than one PRP (a "successive" PRP) under the same case. The rules for successive PRPs found in many sources including court rules, statutes, and case law. None of those rules, however, apply in this case.

RAP 16.4(d) provides: "No more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown." This typically includes claims that have already been "heard" and "determined on the merits," and PRP's that violate the "abuse of writ doctrine."[3]

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[3] *In re Greening,* 141 Wn.2d 687, 699, 9 P.3d 206, 212 (2000) (citations and internal quotation marks omitted).

Here, this PRP does not fall into either category, as the claims below have not yet been heard, or determined by an appellate court.[4] Further, though Mr. Richardson has filed one previous PRP, he could not have abused the writ because he filed that PRP pro se.[5]

Finally, if the petitioner has already filed a petition raising "similar grounds" for relief, under RCW 10.73.140 the Court of Appeals can still consider that issue if it finds "good cause" to do so. But, this statute does not apply to PRPs filed in the Supreme Court, as this one has been.[6]

B. THIS PRP IS TIMELY

Collateral attacks must generally be filed within one year of the date that the conviction became final.[7] This time bar does not apply to certain claims, including the argument only argument advanced in this brief: that the verdict is not supported by the evidence.[8]

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[4] Below, Mr. Richardson argues that the evidence is insufficient to prove that he, rather than someone else, committed the murder. This is a very different argument the limited one that he argued in his direct appeal: that the state still proved murder, but failed to prove that it was premeditated.

[5] *Matter of Jeffries*, 114 Wn.2d 485, 492, 789 P.2d 731, 737 (1990) (quoting *Kuhlmann v. Wilson*, 477 U.S. 436, 444 n. 6, 106 S. Ct. 2616, 2622 n. 6, 91 L. Ed. 2d 364 (1986)).

[6] RCW 10.73.090.

[7] *Id.*

[8] RCW 10.73.100(4).

C. MR. RICHARDSON IS UNLAWFULLY RESTRAINED

A PRP is one way to collaterally attack an unlawful conviction or sentence. To warrant relief, the PRP must show that the petitioner is under "restraint" and such restraint is "unlawful."[9] "Restraint" includes current incarceration or any other "disability"—including collateral consequences of a conviction—that stem from the unlawful conviction.[10] Such restraint is "unlawful" if it meets one of the numerous criteria defined in RAP 16.4(c). This definition includes any conviction or sentence that was "entered," obtained," or "imposed" in violation of the Constitution or any other "laws of the State of Washington."[11]

Mr. Richardson, who is currently serving his sentence in this case, is certainly subject to restraint. And, as argued below, that restraint is unlawful because he was convicted of two crimes, without sufficient evidence.

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[9] RAP 16.4(a).

[10] RAP 16.4(b). "A petitioner is under a 'restraint' if the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case." *See In re Pers. Restraint of Davis,* 142 Wn.2d 165, 170 n. 2, 12 P.3d 603 (2000); *In re Pers. Restraint of Powell,* 92 Wn.2d 882, 887-88, 602 P.2d 711(1979); *Born v. Thompson,* 154 Wn.2d 749, 764-65, 117 P.3d 1098 (2005).

[11] RAP 16.4 (C).

D. UNDER WASHINGTON'S CORPUS DELICTI DOCTRINE, THE STATE FAILED TO INTRODUCE ENOUGH EVIDENCE, INDEPENDENT OF MR. RICHARDSON'S OWN STATEMENT'S, TO PROVE THAT HE KILLED ANYONE. HIS CONVICTION FOR MURDER MUST BE DISMISSED.

1. Standard of Review

A conviction must be reversed for insufficient evidence if, taking the evidence in the light most favorable to the State, no rational trier of fact could have found guilt beyond a reasonable doubt.[12] The admissibility of the accused's statement under the *corpus delict* rule is a mixed question of law and fact, reviewed *de novo*.[13]

2. Washington's Corpus Delicti Doctrine

In Washington, a defendant's incriminating statements standing alone, are insufficient to establish *corpus delict*, or body of the crime.[14] Washington courts ground the doctrine in judicial mistrust and a concern that defendants might be unjustly or falsely convicted because of confessions alone.[15] The concern is not merely whether the confession would be admissible; it is whether there is enough evidence to assure the court, independent of the alleged confessions, that the defendant actually committed the crime charged.[16]

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[12] *State v. Chouinard*, 169 Wn. App. 895, 899, 282 P.3d 117 (2012) *review denied*, 176 Wn.2d 1003, 297 P.3d 67 (2013).
[13] *State v. Dow*, 168 Wn.2d 243, 249, 227 P.3d 1278 (2010).
[14] *Dow*, 168 Wn.2d at 249; *State v. Brockob*, 159 Wn.2d 311, 328, 150 P.3d 59 (2006).
[15] *Dow*, 168 Wn.2d at 249 (citing *Corbett*, 106 Wn.2d at 576).
[16] *Id.* at 254; *see also State v. Aten*, 130 Wn.2d 640, 657-58, 927 P.2d 210 (1996).

The doctrine of *corpus delicti*, therefore, serves to test other evidence—independent of any confession—to ensure that it sufficiently corroborates the confessions.[17] This inquiry requires that evidence independent of the defendant's statements, viewed in the light most favorable to the State, provides *prima facie* corroboration of the crime described in the incriminating statements.[18]

The test imposes three separate requirements. First, the evidence must be independent of the defendant's own statements.[19] In other words, the State cannot try to prove that the defendant's confession is true, by providing other out-of-court statements of the defendant, which could be equally untrue.

Second, the evidence must sufficiently corroborate the facts required to prove the crime as charged (corroboration).[20] To satisfy this corroboration requirement, the State must have provided independent support for the "logical and reasonable inference" that every element of the "specific crime" was present.[21]

Third, the independent evidence must lead to a "logical and reasonable inference" that State has proved every element of the crime

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[17] *Corbett*, 106 Wn.2d at 573-74.
[18] *Id.* at 328
[19] *Brockob*, 159 Wn.2d at 328-29.
[20] *Id.*
[21] *Id.* at 328-29 (quoting *State v. Vangerpen*, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995)); *Dow*, 168 Wn.2d at 254.

charged.[22] Further, that evidence must not only be consistent with guilt; it must also be "inconsistent with a[] hypothesis of innocence."[23] In other words, unless the evidence is sufficient without the defendant's confession, the State has failed to satisfy corpus.

If the independent evidence fails to meet any one of these requirements, it is insufficient to satisfy the corpus doctrine in Washington and the conviction must be dismissed.[24]

3. The Independent Evidence in the Record Fails to Satisfy Washington's Corpus Doctrine.

As stated above, to satisfy corpus, there must be evidenc in the record, apart from the defendant's own statements, that support a "logical and reasonable inference" that every element of trhe crime charged was provewd, including intent.[25] As applied here, the State needed to establish a reasonable and logical inference that, independent of Mr. Richardson's confessions, on or about March 27, 2008, he acted with premeditated

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[22] *See, e.g., Brockob*, 159 Wn.2d at 328-29; *see also Aten*, 130 Wn.2d at 658 (requiring that independent evidence establish a reasonable and logical inference of criminal negligence in order to admit incriminating statements in second degree manslaughter case).

[23] *Id.* at 329 (citing *Aten*, 130 Wn.2d at 660).

[24] *Id.*

[25] *See, e.g., Brockob*, 159 Wn.2d at 328-29; *see also Aten*, 130 Wn.2d at 658 (requiring that independent evidence establish a reasonable and logical inference of criminal negligence in order to admit incriminating statements in second degree manslaughter case).

intent to cause the death of Eric Nevils, and that he did in fact, cause the his death.[26]

Here, as argued below, the evidence in the record fails to corroborate these two essential two essential elements of First Degree Murder: intent to kill (with or without premeditation) and causation.

a) Premediated Intent

Premeditation is the deliberate formation of and reflection upon the intent to take a human life.[27] It requires somne degree of thinking beforehand, deliberation, reflection, weighing, or reasoning for a period of time.[28] Without Mr. Richardson's alleged confessions, no reasonable juror could have found premeditation here. The State did not present sufficient independent corroborating evidence to create the reasonable and likely inference that Mr. Richardson killed Nevils after either deliberation or reflection.

Rather, the only direct evidence that proved that Mr. Richardson, rather than someone else, shot anyone was his alleged statements detailed above. But these statements, without more, are insufficient in Washington to prove that he premeditated the murder, as alleged in this case.[29]

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[26] RCW 9A.32.030.
[27] *State v. Allen*, 159 Wn.2d 1, 147 P.3d 581 (2006).
[28] *Id.*
[29] *See, e.g., Brockob*, 159 Wn.2d at 328-29.

b) Causation

As this Court has stated, it is particularly crucial in homicide cases, where life and liberty are at stake, that the State meet the appropriate burden; while *corpus delicti* can be established by circumstantial evidence,[30] "the causal connection between the death of the decedent and the unlawful acts of the [accused] cannot be supported on mere conjecture and speculation."[31]

In *Smith*, the defendant appealed an attempted first degree murder conviction arguing that the evidence failed to satisfy the corpus delicti of the crime.[32] There, an officer questioned the occupants of a car parked after-hours in a park.[33] During the officer's initial frisk, he discovered several weapons.[34] The renter of the car, Mr. Smith, consented to the officer's search of the vehicle and Mr. Smith's person.[35]

Among the many items discovered during that search were fifteen $100 bills, new clothes, a shovel, a pick, a compound bow and arrows, rope, tarps, rain gear, a 100-pound bag of lime, and a large ammunition box.[36] After his arrest, in a taped statement, Mr. Smith confessed to being

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[30] *See, e.g., State v. Smith*, 115 Wn.2d 775, 780-84, 801 P.2d 975 (1990).
[31] *State v. Little*, 57 Wn.2d 516, 358 P.2d 120 (1961).
[32] *Smith*, 115 Wn.2d at 780
[33] *Id.* at 778-79
[34] *Id.*
[35] *Id.* at 779
[36] *Id.* at 779-80

paid $1500 to kill one of the other occupants of the vehicle that night utilizing a plan involving all of the above-mentioned items.[37]

Holding that this evidence was sufficient under *corpus delicti*, the Court denied the appeal. The court reasoned that the State's evidence—Mr. Smith's fifteen $100 bills, the specific arsenal of weapons, the ammunition, a digging implement, as well as the officer's observations—supported the logical and reasonable deduction that a substantial step had been taken to kill someone and independently corroborated the defendant's incriminating statements.[38]

This case is distinguishable from *Smith* in many respects. First, unlike in *Smith*, the State did not provide sufficient, independent corroborating evidence that Mr. Richardson acted with the requisite *mens rea*. The Court of Appeals pointed out what it saw as the strongest circumstantial evidence of Mr. Richardson's premeditation: First, Nevils was killed in an isolated area where Mr. Richardson's vehicle was seen driving away from and second, Nevils was going to testify against his uncle, a member of the same gang to which Mr. Richardson allegedly belongs to.[39] However, independent of Mr. Richardson's own incriminating statements, there was not sufficient evidence of any gang-

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[37] *Id.* at 780.
[38] *Smith*, 115 Wn.2d at 783-84.
[39] *Richardson*, 162 Wn. App. 1022 at *2-3.

related motive. Furthermore, not a single witness saw either the actual shooting, Mr. Richardson in possession of the firearms involved, or even Mr. Richardson himself at the scene of the crime.

In addition to the fact that the independent circumstantial evidence in this case is not sufficient to corroborate Mr. Richardson's incriminating statements, that evidence is also not inconsistent with alternate and contradictory explanations for Nevils' death. In *Aten*, the defendant made several incriminating and somewhat contradictory statements about the death of an infant.[40] However, at trial a pathologist who performed an autopsy of the infant could not determine whether the death was caused by manual interference—smothering—or a form of acute respiratory failure.[41]

This Court focused on that possible innocent explanation and found that the "totality of independent evidence in this case does not lead to the conclusion that there is a 'reasonable and logical' inference that the infant[...] died as a result of criminal negligence and that that inference is not the result of 'mere conjecture and speculation.'"[42]

Similarly, in this case, once the various incriminating statements are excised, the State's evidence does not support a reasonable inference that Mr. Richardson, and not someone else, was responsible for killing

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[40] *Aten*, 130 Wn.2d at 649-57
[41] *Id.* at 646
[42] *Id.* at 661

Nevils or that Mr. Richardson acted without premeditated intent. In fact, the independent circumstantial evidence only supports the inference that Mr. Richardson was with Nevils the night of the shooting, drove away from the neighborhood where residents found Nevils, had at some time possessed two firearms, and was worried about coming into contact with police officers in Tacoma, Washington.

V. REQUEST FOR RELIEF

The trial court should not have allowed the jury to consider Mr. Richardson's alleged confessions.[43] The state failed to present sufficient independent evidence of the *corpus delicti*. Accordingly, the evidence was insufficient for conviction.[44] The court should grant this petition, and remand the case back to the trial court with order to dismiss both convictions.

VI. STATEMENT OF FINANCES

"If petitioner is unable to pay the filing fee or fees of counsel, a request should be included for waiver of the filing fee and for the appointment of counsel at public expense. The request should be

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[43] *Dow*, 168 Wn.2d at 249
[44] *Id.*

supported by a statement of petitioner's total assets and liabilities."[45] Here, Mr. Richardson will supply this court with such a request, and upon receiving it, he respectfully requests that his court waive any filing fees in this case.

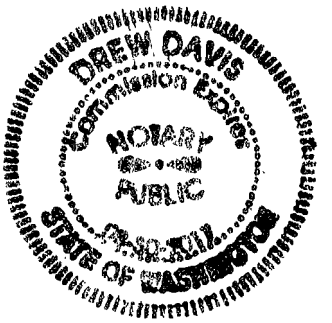
VII. OATH

After being first duly sworn on oath, I depose and say that: I am the attorney for petitioner, I have read the petition, know its contents, and believe the petition is true.

Dated November 30, 2015,

Mitch Harrison, WSBA #43040
Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me, the undersigned notary public, on this 30th day of November, 2015.



Notary Public for Washington

My Commission Expires: 08-30-2017

[45] RAP 16.7 (4) (Statement of Finances).

SUPREME COURT

January 12, 2016 - 12:36 PM

Transmittal Letter

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Case Name: 92672-7 Personal Restraint Petition of John Richardson

County Cause Number:

Court of Appeals Case Number:

✔ Personal Restraint Petition (PRP) Transfer Order

Notice of Appeal/Notice of Discretionary Review

(Check All Included Documents)

Judgment & Sentence/Order/Judgment
Signing Judge: _____

Motion To Seek Review at Public Expense

Order of Indigency

Filing Fee Paid - Invoice No: ___

Affidavit of Service

Clerk's Papers - Confidential Sealed

Supplemental Clerk's Papers

Exhibits - Confidential Sealed

Verbatim Report of Proceedings - No. of Volumes: ___
Hearing Date(s): _____

Administrative Record - Pages: ___ Volumes: ___

Other: _____

Co-Defendant Information:

No Co-Defendant information was entered.

Comments:

No Comments were entered.

Sender Name: Jocelyn M Dunnegan